

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 2548 OF 2015

RAVIRAJ HARBANSLAL TALWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Pramod P. Dhorde.
APP for Respondent No.1 : Mr. S. D. Ghayal.
Advocate for Respondent No.2 : Mr. S. D. Kotkar.

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CORAM : **INDIRA K. JAIN, J.**
DATE : 14th March, 2016.

P.C.:

. This application under Section 378 (4) of the Code of Criminal Procedure is for grant of leave to appeal against the judgment and order dated 17th December, 2014 passed by the learned Judicial Magistrate First Class, Newasa, District Ahmednagar in S.T.C. No.57 of 2003 acquitting the Accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard the learned counsel for parties. Perused record.

3 It is the case of Complainant that Accused was his good friend. On 29th September, 2002 Accused approached him and

demand hand loan of Rs.80,000/-. Having trust in Accused Complainant gave Rs.80,000/- to him. Accused assured to return the amount within 10 days. On 10th October, 2002 Accused handed over a cheque to Complainant. It was presented to the bank for encashment. The same was dishonoured. Legal notice was issued to Accused. As Accused did not comply with the notice complaint under Section 138 of the Negotiable Instruments Act was filed before the learned Magistrate.

4 Learned Magistrate explained particulars of offence to the Accused. He pleaded not guilty and claimed to be tried. In support of his case Complainant examined himself and relied upon various documents. Considering the evidence of Complainant and admissions elicited in the cross-examination Trial Court found that Complainant did not prove that cheque in question was issued towards discharge of legally enforceable debt. In the result complaint was dismissed.

5 With the assistance of the learned counsel for parties this Court has gone through the evidence of Complainant and perused the documents placed on record. It is pertinent to note that

Complainant though stated that he had given Rs.80,000/- to Accused towards hand loan could not establish that he had paid the said amount to Accused. Admittedly no documentary evidence was brought on record to show that Complainant had given Rs.80,000/- to Accused. It is the contention of Complainant that Accused was his good friend and having full trust in him he did not take anything in writing. At the same time Complainant has come with a case that one Subodh Pathade was present when he handed over Rs.80,000/- to Accused. Even Subodh Pathade was not examined by Complainant. No convincing reason is assigned for withholding the best available evidence.

6 In this view of the matter this Court finds that no purpose would be served if leave to appeal is granted. Hence Criminal Application No.2548 of 2015 stands rejected.

[INDIRA K. JAIN, J.]